IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT)
OF SDCL 15-6-5(d)   )   RULE 91-13
- -

Pursuant to a hearing held on February 14, 1991, at Pierre, South Dakota, relating to the amendment of SDCL 15-6-5(d), the Court having considered the proposed amendment, the correspondence and oral presentations relating thereto, if any, and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-6-5(d) be and it is hereby amended to read in its entirety as follows:

15-6-5(d). Filing of papers -- Originals -- Copies. The original of all papers, excluding trial briefs or copies thereof, served upon a party or presented to any court or judge in support of any application or motion and including the summons, all pleadings, notices, demands, offers, stipulations, affidavits, written motions and orders shall, if not filed before service, be filed with the court, together with proof of such service, forthwith upon such service. The foregoing requirement of filing applies to the notice of filing of an order and the notice of entry of a judgment together with proof of service thereof, both of which shall be filed forthwith; if not filed within ten days after service thereof, the time of service shall be deemed to be the date of filing of the notice and proof of service. Any paper may be filed with the court by facsimile transmission and the facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner and with the same force, effect, authority and liability as an original. Any facsimile transmitted directly to the court shall be accompanied by a cover sheet which states the

title of the document, case number, number of pages, identity and voice telephone number of the transmitter and any instructions. Filing shall be deemed complete at the time that the facsimile is received by the court and the filed facsimile shall have the same force and effect as the original. Facsimile filings shall be accepted for filing until 4:30 o'clock p.m. on days when the clerk's office is open for business and the facsimile equipment is in operation. All facsimile filings shall be completed by 5 o'clock p.m. in accordance with § 15-6-6(a).

Within five business days after the court has received the facsimile transmission, the party filing the document shall forward to the court the original document, a certificate signed by an attorney, stating that the original document is identical to the facsimile previously filed, and a ten dollar transmission fee for each document or one dollar per page, whichever is greater. The fee will be deposited into the state court automation fund.

Failure to comply with the requirements for facsimile filing as set forth herein shall authorize the court to apply appropriate sanctions, including but not limited to, the striking of the pleading or paper which was received by facsimile transmission.

If such papers are not to be served they must be filed with the court at the time of their presentation to the court for any action or consideration.

In the event of failure to file any paper required to be filed as herein specified, the adverse party upon proof of the omission so to file shall be entitled without notice to an order requiring such papers to be filed within a time to be specified in the order, and such order may likewise provide that upon such failure so to file such papers, the action or proceeding shall be dismissed without prejudice and that no new action or proceeding may be commenced without payment of reasonable terms to be fixed by the court.

If any process, original pleading, or any other paper, be lost or withheld by any person, the court may authorize a copy thereof to be filed and used instead of the original.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 1991.

DATED at Pierre, South Dakota, this 26th day of February, 1991.

BY THE COURT:

ATTEST:

Gloria J. Engel
Clerk of the Supreme Court
(SEAL)

Chief Justice Robert A. Miller

SUPREME COURT
STATE OF SOUTH DAKOTA
F I L E D

FEB 26 1991

Gloria J. Engel
Clerk